

Southend-on-Sea Borough Council

Agenda
Item No.

Report of Deputy Chief Executive (Place)

To

Licensing Sub-Committee

On

8th October 2018

Report prepared by: Mark Newton

34-36 Elm Road, Leigh-on-Sea, Essex, SS9 1SN
Application for the Variation of a Premises Licence

LICENSING ACT 2003

A Part I Public Agenda Item

1. Purpose of Report

- 1.1 This report considers an application by Rococo (Leigh) Limited for the variation of a Premises Licence.

2. Recommendation

- 2.1 That the Sub-Committee determines the application.
- 2.2 Should the Sub-Committee decide to approve the application, the relevant mandatory licence conditions must be applied. (These are set out in Appendix 1).
- 2.3 Appendix 2 sets out possible condition, drawn from the application, for the Sub-Committee's consideration.

3. Background

- 3.1 The application relates to an existing licensed premises located on Elm Road, Leigh-on-Sea along a stretch of commercial units with a number residential properties in the vicinity.

4. Proposals

- 4.1 The application was given to the Licensing Authority on the 17th August 2018 and is for the variation of a Premises Licence
- 4.2 Details of the variation which are to be determined by the Sub-Committee can be briefly summarised as follows:
- To amend the premises layout in accordance with drawing No. 1728 02.
 - To amend the conditions in relation to the covers and capacity.

4.3 The proposals are more fully documented in the application form which has been copied to Sub-Committee Members

5. Application Procedures

5.1 Applicants for variation of licence are required by law to send copies of their applications to all of the "Responsible Authorities". They are also required to display a notice giving brief details of the application in a prescribed form at the application site, and to publish the same information in a newspaper circulating in the area.

5.2 Representations were received from two Responsible Authorities namely the Council's Environmental Protection Team, the Licensing Authority in their role as a responsible authority and Leigh Town Council.

5.3 Copies of the representations have been provided to the Sub-Committee Members. In accordance with the legislation, all parties have been invited to attend the hearing.

6. Matters for Consideration

6.1 Formal objections having been made and not withdrawn or resolved, the Licensing Authority is obliged to hold a hearing to consider them. Further, having regard to such representations, the Authority is required to take steps (if any) as it considers appropriate for the promotion of the Licensing Objectives.

Thus, the Authority may:

- a) Grant the licence, subject to conditions consistent with the operating schedule (modified as considered appropriate for the promotion of the Licensing Objectives) and subject to relevant mandatory conditions;
- b) Exclude from the scope of the licence any of the licensable activities to which the application relates;
- c) Refuse the application.

6.2 The Licensing Act 2003 requires that the Licensing Authority must carry out its functions under the Act with a view to promoting the Licensing Objectives. These are:

- a) The prevention of crime and disorder;
- b) Public safety;
- c) The prevention of public nuisance; and
- d) The protection of children from harm.

6.3 In carrying out its licensing functions, the Licensing Authority must also have regard to:

1. Its Licensing Statement, and
2. The guidance issued by the Secretary of State.

6.4 The Licensing Authority has, in accordance with the requirements of the Act, prepared and published a Statement of Licensing Policy, following formal consultation. Copies of this document, together with the statutory guidance, have been made available to all Licensing Committee Members.

7. Existing Licensing Controls

7.1 The existing Premises Licence permits the following activities and timings.

- a) The sale by retail of alcohol for consumption on and off the premises, the provision regulated entertainment comprising of films and recorded music:

Sundays to Wednesdays	09:00 - 23:30
Thursdays	09:00 - 00:00
Fridays and Saturdays	09:00 - 01:00

On New Year's Eve from 09:00 until the start of permitted hours the following day.

- b) The provision of regulated entertainment comprising live music:

Live Music daily between 09:00 - 23:00
On New Year's Eve from 09:00 until the start of permitted hours the following day.

- c) The provision of late night refreshment may be provided:

Sundays to Wednesdays	23:00 - 23:30
Thursdays	23:00 - 00:00
Fridays and Saturdays	23:00 - 01:00

On New Year's Eve from 23:00 until 05:00 the following day.

7.2 The opening times of the premises are:

Sundays to Wednesdays	09:00 - 00:00
Thursdays	09:00 - 00:30
Fridays and Saturdays	09:00 - 01:30

On New Year's Eve from 09:00 until the start of permitted hours the following day.

7.3 A copy of the existing Premises Licence has been supplied to the Sub-Committee.

8. Background Papers

8.1 Council's Statement of Licensing Policy.

9. Appendices

9.1 Appendix 1 - Mandatory conditions.

9.2 Appendix 2 - Conditions drawn from the application, for the Sub-Committee's consideration.

MANDATORY CONDITIONS

The Licensing Act 2003 lays down certain mandatory conditions which must be applied to Premises Licences. These are summarised below:-

- 1) No supply of alcohol may be made under the premises licence
 - a) at a time when there is no designated premises supervisor in respect of the premises licence or
 - b) at a time when the designated premises supervisor does not hold a personal licence or his personal licence is suspended.
- 2) Every supply of alcohol under the premises licence must be made or authorised by a person who holds a personal licence.
- 3) Any individual who carries out security activities at the premises must be licensed by the Security Industry Authority.
- 4) The responsible person must ensure that staff on relevant premises do not carry out, arrange or participate in any irresponsible promotions in relation to the premises. In this paragraph, an irresponsible promotion means any one or more of the following activities, or substantially similar activities, carried on for the purpose of encouraging the sale or supply of alcohol for consumption on the premises—
 - (a) games or other activities which require or encourage, or are designed to require or encourage, individuals to—
 - (i) drink a quantity of alcohol within a time limit (other than to drink alcohol sold or supplied on the premises before the cessation of the period in **which** the responsible person is authorised to sell or supply alcohol), or .
 - (ii) drink as much alcohol as possible (whether within a time limit or otherwise);
 - (b) provision of unlimited or unspecified quantities of alcohol free or for a fixed or discounted fee to the public or to a group defined by a particular characteristic in a manner which carries a significant risk of undermining a licensing objective; .
 - (c) provision of free or discounted alcohol or any other thing as a prize to encourage or reward the purchase and consumption of alcohol over a period of 24 hours or less in a manner which carries a significant risk of undermining a licensing objective; .
 - (d) selling or supplying alcohol in association with promotional posters or flyers on, or in the vicinity of, the premises which can reasonably be considered to condone, encourage or glamorise anti-social behaviour or to refer to the effects of drunkenness in any favourable manner; .

- (e) dispensing alcohol directly by one person into the mouth of another (other than where that other person is unable to drink without assistance by reason of disability).
- 5) The responsible person shall ensure that free potable water is provided on request to customers where it is reasonably available.
- 6) a) The premises licence holder or club premises certificate holder must ensure that an age verification policy is adopted in respect of the premises in relation to the sale or supply of alcohol.
- b) The designated premises supervisor in relation to the premises licence must ensure that the supply of alcohol at the premises is carried on in accordance with the age verification policy.
- c) The policy must require individuals who appear to the responsible person to be under 18 years of age (or such older age as may be specified in the policy) to produce on request, before being served alcohol, identification bearing their photograph, date of birth and either—
- (i) a holographic mark, or
- (ii) an ultraviolet feature.
- 7) The responsible person shall ensure that:-
- (a) where **any** of the following alcoholic drinks is sold or supplied for consumption on the premises (other than alcoholic drinks sold or supplied having been made up in advance ready for sale or supply in a securely closed container) it is available to customers in the following measures—
- (i) beer or cider: ½ pint;
- (ii) gin, rum, vodka or whisky: 25 ml or 35 ml; and
- (ii) still wine in a glass: 125 ml;
- (b) these measures are displayed in a menu, price list or other printed material which is available to customers on the premises; and
- (c) where a customer does not in relation to a sale of alcohol specify the quantity of alcohol to be sold, the customer is made aware that these measures are available.
- 8) A relevant person shall ensure that no alcohol is sold or supplied for consumption on or off the premises for a price which is less than the permitted price.
- 9) For the purposes of the condition 8 —
- a. “duty” is to be construed in accordance with the Alcoholic Liquor Duties Act 1979;
- b. “permitted price” is the price found by applying the formula— **$P = D + (D \times V)$** , where— (i)P is the permitted price, (ii)D is the amount of duty chargeable in relation to the alcohol as if the duty were charged on the date of the sale or

supply of the alcohol, and (iii)V is the rate of value added tax chargeable in relation to the alcohol as if the value added tax were charged on the date of the sale or supply of the alcohol;

- c. “relevant person” means, in relation to premises in respect of which there is in force a premises licence—
 - i. the holder of the premises licence,
 - ii. the designated premises supervisor (if any) in respect of such a licence, or
 - iii. the personal licence holder who makes or authorises a supply of alcohol under such a licence;
- d. “relevant person” means, in relation to premises in respect of which there is in force a club premises certificate, any member or officer of the club present on the premises in a capacity which enables the member or officer to prevent the supply in question; and
- e. “valued added tax” means value added tax charged in accordance with the Value Added Tax Act 1994

10) Where the permitted price given by sub-section (b) of Condition 9 would (apart from this condition) not be a whole number of pennies, the price given by that sub-section shall be taken to be the price actually given by that sub-section rounded up to the nearest penny.

(i) Sub-section (ii) applies where the permitted price given by sub-section (b) of sub-section (ii) on a day (“the first day”) would be different from the permitted price on the next day (“the second day”) as a result of a change to the rate of duty or value added tax.

(ii) The permitted price which would apply on the first day applies to sales or supplies of alcohol which take place before the expiry of the period of 14 days beginning on the second day.

11) The admission of children to the exhibition of any film shall be restricted in accordance with the recommendations of the British Board of Film Classification.

APPENDIX 2

CONDITIONS DRAWN FROM THE OPERATING SCHEDULE

- 1) A minimum of 72 covers shall be maintained on the ground floor.
- 2) Capacity of the premises shall not exceed 100 patrons (excluding staff).

It is proposed that these conditions will replace conditions 1 and 2 of Annex 2 in the existing licence.